

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-093384

03/14/2012

HONORABLE DAVID B. GASS

CLERK OF THE COURT

L. Nevenhoven

Deputy

IN RE THE MARRIAGE OF
KATIE ELLEN WHITE

J VINCENT GONZALEZ

AND

DAVID LEE KING JR.

DAVID LEE KING JR.
500 N ROOSEVELT #124
CHANDLER AZ 85226

DOCKET-FAMILY COURT-SE
FAMILY COURT SERVICES-CCC
BARB KIFFMEYER
P O BOX 10698
TEMPE AZ 85284

RULING

The Evidentiary Hearing in this matter was conducted on March 8, 2012. During the proceedings, the Court heard from the witnesses, including the parties and the Court Appointed Advisor. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments. After significant deliberation, the Court makes the following findings and enters the following orders.

Mother and Father have had an acrimonious relationship. Mother has had to resort to an order protection against Father. The parties have had to exchange the child at a police station. The police have been involved in child exchanges other than those at the police station. When

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Mother filed a petition to enforce child support, Father responded by filing a retaliatory report with child protective services, alleging that Mother neglected to care for Andrew's eczema. Mother has had to resort to filing petitions to enforce child support against Father.

Both parents have acted poorly. Both parents have involved the child in their conflict. They continue their behavior with Andrew at Andrew's expense. Neither Mother nor Father fully understands the impact of this discord on the child. Andrew is displaying anger issues. If the parents do not change, Andrew will continue to suffer as he grows. The Court is hopeful that the parents will change for Andrew's sake. The orders are designed to reach that result.

**POST-DECREE CHILD CUSTODY MODIFICATION REQUIRES MATERIAL
CHANGE IN CIRCUMSTANCES**

Mother seeks no actual change in sole legal custody of the minor child in common: Andrew King (born February 24, 2004). The Court, therefore, need not determine if there has been a material change of circumstances affecting the welfare of the child. *See Canty v. Canty*, 178 Ariz. 443, 448, 874 P.2d 1000, 1005 (App. 1994). A.R.S. § 25-403(B) provides that in a contested custody case, "the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child." The Court must make those specific findings in post-decree custody matters. *See In Re the Marriage of Dieszi*, 201 Ariz. 524, 38 P.3d 1189 (App. 2002).

**POST-DECREE SUBSTANTIAL CHANGE IN PARENTING TIME
CONSTITUTES A SUBSTANTIAL CHANGE IN CUSTODY**

Mother seeks to make changes that would not be significant based on the current parenting plan. Mother is the primary residential parent, which will continue if her request is granted. *See Owen v. Blackhawk*, 206 Ariz. 418, 421, ¶11, 79 P.3d 667, 670, ¶11 (Ct. App. 2003). This case, therefore, does not involve a substantial change in physical custody, the Court is not obligated to make the specific findings required by A.R.S. § 25-403(J)." *See id.*

In making a custody determination, the Court is mindful that as a matter of public policy, absent evidence to the contrary, "it is in a child's best interest: (1) To have substantial, frequent, meaningful and continuing parenting time with both parents[; and] (2) To have both parents participate in decision-making about the child." *See* A.R.S. § 25-103(B).

Father made a last minute request for equal parenting time. Father did not plead the request. Father did not establish that equal parenting time is in the child's best interest. Father also argued that any change in the child's schedule would be traumatic for the child.

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CUSTODY AND PARENTING TIME

Jurisdictional Findings

THE COURT FINDS that Mother and Father have one minor child in common: Andrew King (born February 24, 2004). The parties and the minor child have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has continuing jurisdiction as Arizona is the “home state” of the minor child. *See* A.R.S. § 25-1031.

Custody Terms

Parental Access To Records And Information- Both parents are entitled to have equal access to documents and other information concerning each child’s education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

Educational Arrangements- Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

Medical And Dental Arrangements- Both parents have the right to authorize necessary emergency medical/dental treatment and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child. Both parents shall cooperate on health matters pertaining to each child and shall keep one another reasonably informed regarding the status of each child’s health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

Parental Communication- The parents shall use e-mail as their primary method for communication. This method allows the parents to develop their communication and ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party

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shall have proof as to what was communicated. The parents shall use text messaging only for emergency matters involving the child, such as being late for an exchange.

Relocation- Neither Mother nor Father shall relocate the residence of the child outside of the state of Arizona or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move.

Mediation Or Conciliation Services- The parties shall participate in mediation through a private mediator or through this Court's Conciliation Services to resolve any disputes, problems or proposed changes regarding this child custody order or parenting time before seeking further relief from the Court.

Decision Making Authority- Parental decisions shall be required for major issues in raising the child and in meeting on-going needs. When they arise, each parent shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input. If they cannot agree, Mother shall have the ability to make the final decision because she has sole legal custody.

Parenting Time

IT IS ORDERED that as a term of the overall custody orders, parenting time shall be exercised as follows.

A. Regular Parenting Time:

1. Mother: Mother shall continue to be the child's primary residential parent. The child shall reside with Mother at all times except as expressly provided below.

2. Father:

- Father shall have parenting time with the child every other weekend from 6:00 p.m. on Friday until 6:00 p.m. on Sunday.
- Father shall have parenting time every Wednesday. If there is school, Father shall have parenting time from after school until 8:30 p.m. If Andrew has any homework, Father must ensure that Andrew completes the homework during Father's parenting

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time. If there is no school, Father shall have parenting time from 6:00 p.m. until 8:30 p.m.

B. Father's Holidays in Even-Numbered Years; Mother's Holidays in Odd-Numbered Years:

1. **Easter:** From 6:00 p.m. on Friday until 6:00 p.m. on Sunday evening.
2. **4th of July:** From 6:00 p.m. on July 3rd until 9:00 a.m. on July 5th.
3. **Thanksgiving:** Thanksgiving starts at the end of school before Thanksgiving Day or 6:00 p.m. on the Wednesday before Thanksgiving (whichever is earlier) and ends at 6:00 p.m. on the Sunday following Thanksgiving Day.

C. Father's Holidays in Odd-Numbered Years; Mother's Holidays in Even-Numbered Years:

1. **Spring Break:** All weekdays plus all weekend days. The break will begin at the end of school on the last day before the break and shall end at 6:00 p.m. on the day before school resumes before the break.
2. **Halloween:** From 6:00 p.m. to 8:30 p.m. on October 31st.
3. **Fall Break:** All weekdays plus all weekend days. The break will begin at the end of school on the last day before the break and shall end at 6:00 p.m. on the day before school resumes before the break. With this schedule, a parent will have both spring break and fall break in a calendar year. However, the schedule ensures that the parents will alternate spring break and fall break by school year, with each parent having one of the school breaks.

D. Other Holidays:

1. **Christmas:** Christmas shall be divided into three segments.
 - The first segment shall begin when school ends for the holiday break or 6:00 p.m. on December 23rd (whichever is earlier) and continue until 10:00 a.m. on December 25th.
 - The second segment shall begin at 10:00 a.m. December 25th and continue until 6:00 p.m. on December 30th.

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- The third segment shall begin at 6:00 p.m. on December 30th and continues until 6:00 p.m. on the day before school resumes at the end of the holiday break or January 1st (whichever is later).
- In even-numbered years, Mother shall have the first segment, and Father shall have the second segment. In odd-numbered years, Father shall have the first segment, and Mother shall have the second segment.
- In even-numbered years, Mother shall have the third segment. In odd-numbered years, Father shall have the third segment.

2. Monday holidays/Three-day weekends (such as Civil Rights Day, Columbus Day, Presidents' Day, Memorial Day, Labor Day, etc.): The child will remain in the care of the parent who has the child for the weekend. The return time will be 6:00 p.m. on Monday.

3. Father's/Mother's Day: The child shall be with Father on Father's Day and with Mother on Mother's Day. Father's/Mother's Day begins at 6:00 p.m. on the Friday before the day and ends at 6:00 p.m. on Sunday evening.

4. The Child's Birthday: Mother will have odd-numbered years, and Father will have even-numbered years. The birthday begins the day before the birthday either after school or 6:00 p.m. if the child is not in school until the morning after the birthday for the start of school or 9:00 a.m. if there is no school.

5. Parent's Birthdays: The child shall be with Father on Father's birthday and Mother on Mother's birthday. The birthday begins the day before the birthday either after school or 6:00 p.m. if the child is not in school until the morning after the birthday for the start of school or 9:00 a.m. if there is no school.

6. All Other Holidays: For any other holidays not detailed above, special occasions or birthdays, the regular access schedule shall apply.

E. Holiday Time Priority: Holiday time shall take priority over regular parenting time and summer vacation time.

F. Summer:

- Mother and Father also shall have two weeks of uninterrupted parenting time during the summer commencing on a mutually agreed upon date.

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- The two weeks may be continuous or may be taken in two separate weeks. If Mother and Father cannot mutually agree, Father shall have precedence in even-numbered years, and Mother shall have precedence in odd-numbered years.
- Father shall notify Mother of his two weeks by April 15th in even-numbered years, and Mother shall notify Father of her two weeks by April 15th in odd-numbered years.
- Neither Mother nor Father may use summer vacation time to preempt the other parent's holiday time scheduled above.

G. Transportation: The parent whose parenting time is beginning will be responsible for picking up the child at the child's school or at the Chandler Police Substation on Desert Breeze, near McClintock and Chandler Boulevard.

H. Travel: If either Mother or Father has any desire to travel with the child outside of the State of Arizona, that parent must provide the other parent with a written itinerary of their travel by no later than thirty (30) days prior to the intended date for travel. If either parent travels within the State of Arizona but more than 100 miles from that parent's home, that parent must provide the other parent with a written itinerary of their travel by no later than seven (7) days prior to the intended date for travel.

I. Telephone Contact: Each parent shall have reasonable telephone contact with the child when the child is in the care of the other parent.

J. Caregiver of Choice: Mother's request to be the caregiver of choice is denied. If the parents are able to agree, no order is necessary. If the parents are not able to agree, no order will work. The Court encourages the parents to work out an agreement in that regard. Father and Mother both must consider what is in the child's best interest. The Court will not order a caregiver of choice provision.

EXCHANGE OF INFORMATION BETWEEN PARENTS

In addition, the parties shall exchange weekly "reports" via e-mail. To assist the parties in developing this level of communication, there shall be a required weekly e-mail exchange between the parties.

- By no later than 9:00 p.m. on each Sunday, each parent shall send an e-mail to the other parent. The e-mail shall detail relevant events during the parenting time regarding the children, including medical, school or extra-curricular activities.

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Further, any upcoming events or appointments shall be detailed in the e-mail. Lastly, any issues that exist for each child shall be summarized along with that parent's thoughts as to how or what must be addressed. The e-mail shall not be critical in nature, but rather shall be informational and designed to create a dialogue on any issues that require both parties to act.

- By no later than 9:00 p.m. on each Tuesday, the parent shall send a responding e-mail. It may state as little as confirmation that the prior Sunday e-mail from the other parent has been received, or it may include substantive responses to issues or events noted by the other party.
- Each parent is directed to print each e-mail and store them in a binder or other filing system. It will then serve as the "record" for critical, non-emergency communication, whether for future decision making or for future litigation purposes.
- In **ALL** communications including the weekly e-mails, Mother and Father shall be respectful in their tone and shall not use any profanities or expletives. The parties also shall not use any substitutes for profanities, such as random keystrokes, and shall not use any changes in font or emphasis to show anger or dissatisfaction.

PARENTING COORDINATOR

THE COURT FINDS that the appointment of a Parenting Coordinator is in the child's best interest.

IT IS ORDERED that Barbara Kiffmeyer shall be appointed to serve as a Parenting Coordinator. A separate minute entry shall issue.

IT IS FURTHER ORDERED that the parties will be equally responsible for paying the cost of the parenting coordinator, subject to reallocation as directed in the appointment order that shall issue.

CHILD SUPPORT

THE COURT FINDS that neither Mother nor Father has asked to modify child support in this matter.

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ATTORNEY FEES AND COSTS

Father has asked the Court to reallocate the cost of the Court Appointed Advisor. An award of attorney fees and costs is governed by A.R.S. § 25-324. Section 25-324 provides as follows:

A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

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THE COURT FINDS that there is no substantial disparity of financial resources between the parties.

THE COURT FURTHER FINDS that Father acted unreasonably in the litigation. Specifically, Father filed a retaliatory report with child protective services, alleging that Mother neglected to care for an outbreak of eczema that Andrew had. Andrew did have an outbreak, but the evidence did not establish that Mother neglected to care for the condition. Instead, the evidence shows that Father filed the allegations of neglect in response to Mother's request to enforce child support.

THE COURT FURTHER FINDS that the provisions of A.R.S. § 25-324(B) do not apply. Mother brings her request in good faith. She has no weekend parenting time under the current parenting time schedule. In addition, the current parenting time schedule does not provide for specifics on holiday parenting time and are somewhat ambiguous.

IT IS THEREFORE ORDERED granting Mother's request that the Court order Father to reimburse her for the \$600.00 cost of having a legal document preparer assist her with documents and \$81.00 for filing the petition.

IT IS THEREFORE ORDERED entering judgment against David King and in favor of Katie White in the amount of \$681.00, together with interest at the legal rate of 4.25% per annum.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

/ s / HONORABLE DAVID B. GASS

JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.